

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4798-04  
Bill No.: HCS No. 2 for HB 1344  
Subject: Crimes and Punishment; Criminal Procedure; Courts  
Type: Original  
Date: February 22, 2012

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Bill Summary: This proposal authorizes the expungement of certain criminal records.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
General Revenue	(Could exceed \$718,146)	(Could exceed \$851,559)	(Could exceed \$860,754)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Could exceed \$718,146)</b>	<b>(Could exceed \$851,559)</b>	<b>(Could exceed \$860,754)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
Criminal Records	(\$230,273)	(\$279,150)	(\$282,001)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$230,273)</b>	<b>(\$279,150)</b>	<b>(\$282,001)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	20	20	20
Criminal Records	6	6	6
<b>Total Estimated Net Effect on FTE</b>	<b>26</b>	<b>26</b>	<b>26</b>

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the Secretary of State**, the **Joint Committee on Administrative Rules** and the **Office of the State Public Defender** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Corrections (DOC)** state their computer system for monitoring inmate records does have the ability to mark records as confidential and to delete them; hard-copy records are the concern. If expungement of convictions includes prison records, this would create a significant workload on DOC's record offices within the institutions and at the probation and parole offices. There is also a concern for tracking previous medical, mental health, substance abuse and education records. Fiscal impact due to passage of this proposal is an unknown amount of costs per each year.

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation would expand the number of criminal records eligible for expungement. This would cause a significant workload and fiscal impact on the courts. As a result of this legislation, we estimate annually approximately:

27,855 misdemeanor and nonviolent felony expungement petitions (10% of the annual 278,551 guilty dispositions)

Based upon our clerical weighted workload statistics, it would take 166 minutes or 2.7 hours to process each case. In FY 2013, we estimate the cost will be \$1,687,644 and 47 court clerk FTE.

However, in response to similar proposals in previous years, including HB 178 in 2011, CTS estimated approximately 9,000 expungement petitions to be processed from this proposal and an estimated time of 3.75 hours of processing time for each. Based upon these estimations, CTS assumed the need for 20 additional court clerk FTE at a cost of \$735,000 per year. **Oversight** will utilize this lower estimate

In response to previous versions of this proposal, officials from the **Department of Transportation (MoDOT)** stated it appears that this bill would take MoDOT out of compliance with federal regulations regarding CDL holder's records. 49 CFR Section 384.226 prohibits states from masking any CDL drivers' convictions for any state or local traffic control laws from appearing on the driver's record in any type of motor vehicle. 49 CFR Section 384.225 requires a minimum retention period of three years but also cites retention requirements found in the

ASSUMPTION (continued)

Commercial Driver's License Information System which discusses a ten year driver's license history.

The bill would allow any person to apply to any court to have his or her record expunged of:

1. All nonviolent felony crimes;
2. Any misdemeanor offense;
3. Any municipal offense; and
4. Any traffic offense. This would include traffic violations by CDL holders

By allowing CDL holders to have records of their traffic violations expunged, the proposal masks violations on CDL holders' driving records, thereby violating 49 CFR Section 384.226 and/or Section 384.225 record retention. MoDOT believes this language will place Missouri out of compliance with the federal regulations; therefore, Missouri could lose federal funding.

Possible impact to Federal-Aid Highway Funds: If this legislation is enacted, the United States Department of Transportation (USDOT) would sanction Missouri's Federal-aid highway funds, which would significantly and negatively affect MoDOT. MoDOT would lose 5% (\$30 million) the first year, then 10% (\$60 million) each year thereafter.

Impact to Motor Carrier Safety Assistance Program: Highway Safety is the recipient of a grant to administer the federal Motor Crime Safety Assistance Program (MCSAP). These grant funds are utilized statewide to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles. In addition to having its Federal-aid highway funds withheld, Missouri could also lose its MCSAP grant monies if it were found out of compliance with 49 CFR Section 384.226. According to Highway Safety, the MCSAP grant totals approximately \$5 million per year.

Officials from the **Department of Revenue (DOR)** state Section 610.108 would permit the closed record of any misdemeanor or felony drug-related traffic offense, except that any felony committed by a CDL holder under chapter 195 shall not qualify, as well as any municipal ordinance or any other misdemeanor traffic offense and related administrative license action(s) if certain prerequisites are shown, under subsection 1, as long as such convictions or license actions are listed in the same petition, and the Department of Revenue is named as a party in the petition.

- A person may apply to any court where he/she pled guilty to an offense listed in this section and have that closed from his/her record.

ASSUMPTION (continued)

- This section excludes (1) driving while intoxicated under section 577.010; (2) driving with excessive blood alcohol content under section 577.012; (3) other various violations.
- Excludes municipal ordinance violations and misdemeanor offenses committed by a holder of a commercial driver's license regardless of what type of vehicle the offense is committed in.
- Establishes criteria the petitioner must meet to be considered for a closed record.
- Provides for the dismissal of the petition if the criteria are not met. But, upon granting an order of closer the records become confidential and no person can be found liable of perjury or false statement if he/she fails to acknowledge the arrest, plea, trial, convictions or closer of all official records.
- Specifies what information the person must include in the petition.

The proposed language will potentially require DOR to honor court-orders for closed records for other non-DWI or BAC offenses defined as "intoxication-related traffic offense" under 577.023.1(4), to include felonies including involuntary manslaughter [§ 565.024.(2) or (3)]; murder in the 2nd degree where underlying offense is an intoxication-related traffic offense [§ 565.021]; assault in the 2nd degree [§ 565.060.1(4)]; assault of a law officer in 2nd degree [§ 565.082.1(4)]; and violations of driving under the influence of drugs. This could potentially require the Department to cancel certain § 302.060.1(9) and (10) five, ten, and permanent license denial actions, where one or more of the offenses listed above supported the denial action.

The proposed language would also permit an offender a 'window of opportunity' to expunge prior "intoxication-related traffic offenses" as defined in § 577.023.1(4) [except DWI and BAC], so as to avoid their use for enhancement of a current offense under § 577.023 for prior, persistent, chronic or aggravated offender status, provided that a petition for closer is filed before a person has been "convicted" or placed on probation during the previous five-year period.

The proposal would also permit the use of closed record offenses by law enforcement for criminal investigation purposes and by prosecutors for prosecution and offense enhancement.

DOR states they are unable to determine how many court-orders to close records will be received to process. A Revenue Processing Tech I can process 104 court orders per day. If we receive 104 court orders daily we would require one such FTE to process the additional court-orders to close records. If the volume of court-orders to close records received for processing exceeds 104 per day, then additional FTE will be required and will be requested through the appropriation process.

ASSUMPTION (continued)

If a court-orders to close records is received for a conviction involving the operation of a commercial vehicle or by a commercial driver license holder, the state of Missouri could be found to be in noncompliance based on the following federal regulations: Title 49 part 384 section 384.225, Title 49 part 384 section 384.226, Title 49 part 383 section 383.51 and Title 49 part 384, section 384.231.

If a court-orders for closed records is received for an offense involving the use of a commercial or noncommercial motor vehicle by a CDL holder and a state is found to be in noncompliance, than Federal Highway funds are subject to a reduction or could be withheld. The first year of noncompliance the sanction is up to five (5) percent, the second and subsequent years of noncompliance the sanction is up to ten (10) percent of those funds. Potential fund loss could be \$65,000,000.

**Oversight** assumes the Department of Revenue's and the Department of Transportation's assumption that the proposal would jeopardize federal funding is speculative and dependent upon other factors. Also, this House Committee Substitute states that any felony committed by a commercial driver's license holder shall not qualify for closure. Therefore, Oversight is not reflecting a fiscal impact to MoDOT in this fiscal note. If the state is found to be out of compliance with federal requirements, then the proposal could result in a loss of federal funding.

**Oversight** assumes the level of expungement will not rise to a level that would require the Department of Revenue to require an additional FTE.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state their Criminal Justice Information Services Division assumes that if every person who is qualified to have his or her record expunged would submit a petition, there would be approximately 15,000 petitions for expungement and this would require 12 additional FTE.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 minutes per year.

Estimated 15,000 petitions for expungement per year x 90 minutes per petition to process = 1,350,000 minutes per year. 1,350,000 minutes per year to process expungements divided by 111,360 minutes per year per FTE = 12 FTE.

It is estimated only 40% to 50% of expungement requests would be submitted. Therefore, this proposed legislation would require five to seven FTE. For purposes of this fiscal note, the Patrol will request six which is in the middle of that range. These FTE (Criminal History Technicians)

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ASSUMPTION (continued)

would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders. These FTE will most likely be 2nd and 3rd shift employees so they would not require any equipment. However, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$3,566 per FTE.

6 Criminal History Technicians (\$1,081 x 24)	\$155,664
Office Equipment/HW/SW	\$3,566

RECURRING COSTS

Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

The Highway Patrol assumes a total cost of the additional FTE of approximately \$280,000 per year to the Criminal Records Fund.

If this bill passes, the Highway Patrol will pursue a fee, similar to the criminal history background check fee, to help offset the costs of researching and reviewing the criminal histories, as well as contacting the various agencies associated with the arrests. For example, a \$20 fee x 7,500 applicants would result in \$150,000 (\$20 x 7,500).

**Oversight** assumes the proposal does not specifically allow for a fee to reimburse the Highway Patrol; therefore, Oversight will reflect only the costs assumed by the agency.

Officials from the **Office of the Attorney General** and the **Office of Prosecution Services** did not respond to our request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
<b>GENERAL REVENUE</b>			
<u>Costs - Department of Corrections</u>			
Potential costs to expunge records	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs - Office of State Courts</u>			
Administrator (CTS)			
Personal Service	(\$459,400)	(\$556,793)	(\$562,361)
Fringe Benefits	(\$243,206)	(\$294,766)	(\$297,714)
Expense and Equipment	<u>(\$15,540)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Costs - CTS</u>	<u>(\$718,146)</u>	<u>(\$851,559)</u>	<u>(\$860,075)</u>
FTE Change - CTS	20 FTE	20 FTE	20 FTE
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Could exceed \$718,146)</u></b>	<b><u>(Could exceed \$851,559)</u></b>	<b><u>(Could exceed \$860,754)</u></b>
Estimated Net FTE Change for the General Revenue Fund	20 FTE	20 FTE	20 FTE
<b>CRIMINAL RECORDS FUND</b>			
<u>Costs - Missouri Highway Patrol (MHP)</u>			
Personal Service	(\$129,720)	(\$157,221)	(\$158,793)
Fringe Benefits	(\$97,303)	(\$117,931)	(\$119,111)
Expense and Equipment	<u>(\$3,250)</u>	<u>(\$3,998)</u>	<u>(\$4,097)</u>
<u>Total Costs - MHP</u>	<u>(\$230,273)</u>	<u>(\$279,150)</u>	<u>(\$282,001)</u>
FTE Change - MHP	6 FTE	6 FTE	6 FTE
<b>ESTIMATED NET EFFECT TO THE CRIMINAL RECORDS FUND</b>	<b><u>(\$230,273)</u></b>	<b><u>(\$279,150)</u></b>	<b><u>(\$282,001)</u></b>
Estimated Net FTE Change for the Criminal Records Fund	6 FTE	6 FTE	6 FTE

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FISCAL IMPACT - Local Government

FY 2013  
(10 Mo.)

FY 2014

FY 2015

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal authorizes a person to apply to any court in which he or she pled guilty or was found guilty for the expungement of the criminal records for certain offenses. The expungement of a record is allowed only when at least five years have elapsed since the person requesting expungement has completed his or her imprisonment, period of probation, or period of parole; the person has not been convicted of or been placed on probation for a misdemeanor or felony during the same period; and the person has not had any other petition for expungement granted. The expungement of records will not be allowed for driving while intoxicated, driving with excessive blood-alcohol content, any misdemeanor violation of Section 568.050 or 568.052, any municipal ordinance violation or misdemeanor offense committed by a holder of a commercial driver's license, any misdemeanor offense requiring registration as a sexual offender or any other misdemeanor sexual offense, or any violation of an order of protection issued under Chapter 455

Any individual wanting to expunge a criminal record may file a verified petition for expungement in the civil division of the circuit court where at least one of the violations occurred naming as defendants all agencies and entities whom the petitioner has reason to believe may possess the record. The court must schedule a hearing on the expungement petition no sooner than 30 days from the filing of the petition and must give reasonable notice of the hearing to each official agency or other entity named in the petition. If a court grants the order of expungement, the records and files maintained in any administrative or court proceeding in an associate circuit or circuit court for any offense ordered expunged will be confidential and only available to the parties or by order of the court for good cause shown. An individual is only allowed to have one petition for expungement granted under these provisions.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

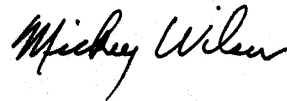
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SOURCES OF INFORMATION

Office of the State Courts Administrator  
Department of Corrections  
Department of Public Safety  
Department of Transportation  
Office of the State Public Defender  
Office of the Secretary of State  
Joint Committee on Legislative Rules  
Department of Revenue

**NOT RESPONDING:**

**Attorney General's Office**  
**Office of Prosecution Services**

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
February 22, 2012